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10 **BEFORE THE**
11 **REGISTRAR OF CONTRACTORS**
12 **CONTRACTORS' STATE LICENSE BOARD**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
14 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. N 2009-175

15 **NU KITCHEN AND FLOORS, INC., dba**
16 **NU CONSTRUCTION**
17 **5491 Ball Road, #F**
18 **Cypress, CA 90630**
19 **ELIAS CHAFIC MAZLOUM, RMO**
20 **ROMEL NASSIF KFOURY, Officer**

A C C U S A T I O N

21 **Contractor's License No. 924081, B**

&

22 **APEX ESTATE CONS**
23 **2202 Cedar Lane**
24 **Tustin, CA 92780**
25 **ROMEL NASSIF KHOURY, Owner**

26 **Contractor's License No. 895619**

27 **Respondents.**

28 Complainant alleges:

PARTIES

1. Wood Robinson ("Complainant") brings this Accusation solely in his official capacity as the Enforcement Supervisor I of the Contractors' State License Board, Department of Consumer Affairs.

1 **License History**

2 2. On October 23, 2008, the Registrar of Contractors issued Contractor's License
3 Number 924081, classification B (general building contractor) to Nu Kitchen and Floors, Inc.,
4 doing business as Nu Construction ("Respondent") with Elias Chafic Mazloun, Responsible
5 Managing Officer, and Romel Nassif Kfoury, Officer. The license was in full force and effect at
6 all times relevant to the charges brought herein and will expire on October 31, 2010, unless
7 renewed.

8 3. On April 30, 2007, the Registrar of Contractors issued Contractor's License Number
9 895619, classification B (general building contractor) to Apex Estate Cons, with Romel Nassif
10 Kfoury, as Owner. The license was in full force and effect at all times relevant to the charges
11 brought herein and will expire on April 30, 2011, unless renewed.

12 **JURISDICTION**

13 4. This Accusation is brought before the Registrar of Contractors ("Registrar") for the
14 Contractors' State License Board ("Board"), Department of Consumer Affairs, under the authority
15 of the following laws. All section references are to the Business and Professions Code ("Code"),
16 unless otherwise indicated.

17 5. Code section 7090 provides, in pertinent part, that the Registrar may suspend or
18 revoke any license or registration if the licensee or registrant is guilty of or commits any one or
19 more of the acts or omissions constituting cause for disciplinary action.

20 6. Code section 7095 provides, in pertinent part, that the Registrar in making his order
21 may:

22 (a) Provide for the immediate complete suspension by the licensee of all operations as a
23 contractor during the period fixed by the decision.

24 (b) Permit the licensee to complete any or all contracts shown by competent evidence
25 taken at the hearing to be then uncompleted.

26 (c) Impose upon the licensee compliance with such specific conditions as may be just in
27 connection with its operations as a contractor disclosed at the hearing, and may further provide
28

1 that until such conditions are complied with, no application for restoration of the suspended or
2 revoked licensee shall be accepted by the Registrar.

3 7. Code section 7096 states:

4 For the purpose of this chapter, the term "licensee" shall include an
5 individual, copartnership, corporation, or any combination or organization
6 licensed under this chapter, and shall also include any named responsible
managing officer or member of the personnel of such licensee whose
appearance has qualified the licensee under the provisions of Section 7068.

7 8. Code section 7097 states:

8 Notwithstanding the provisions of Sections 7121 and 7122, when any
9 licensee has been suspended by a decision of the registrar pursuant to an
accusation or pursuant to subdivision (b) of Section 7071.17, Section 7085.6 or
10 7090.1, any additional license issued under this chapter [the Contractors' State
License Law] in the name of the licensee or for which the licensee furnished
11 qualifying experience and appearance under the provisions of Section 7068,
may be suspended by the registrar without further notice.

12 9. Code section 7098 states:

13 Notwithstanding the provisions of Sections 7121 and 7122, when any
14 license has been revoked under the provisions of this chapter [the Contractors'
State License Law], any additional license issued under this chapter in the name
15 of the licensee or for which the licensee furnished qualifying experience and
appearance under the provisions of Section 7068, may be revoked by the
16 registrar without further notice.

17 10. Code section 7106.5 states, in pertinent part, that the expiration, cancellation,
18 forfeiture, or suspension of a license by operation of law, or by order or decision of the Registrar
19 or a court of law, or the voluntary surrender of the license shall not deprive the Registrar of
20 jurisdiction to proceed with disciplinary action.

21 11. Code section 7121.5 states:

22 Any person who was the qualifying individual on a revoked license, or of
23 a license under suspension, or of a license that was not renewed while it was
under suspension, shall be prohibited from serving as an officer, director,
24 associate, partner, or qualifying individual of a license, whether or not the
individual had knowledge of or participated in the prohibited acts or omissions
25 for which the license was revoked, or suspended, and the employment, election,
or association of such person by a licensee shall constitute grounds for
26 disciplinary action.

12. Code section 7122 states:

The performance by any individual, partnership, corporation, firm, or association of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee other than the individual qualifying on behalf of the individual or entity, if the licensee was a member, officer, director, or associate of such individual, partnership, corporation, firm or association at the time such act or omission occurred, and had knowledge of or participated in such prohibited act or omission.

STATUTORY PROVISIONS

13. Code section 7028, subdivision (a), states that "[i]t is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless such person is particularly exempted from the provisions of this chapter."

14. Code section 7107 states that "[a]bandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor constitutes a cause for disciplinary action."

15. Code section 7109, subdivision (a) states that [a] willful departure in any material respect from accepted trade standards for good and workmanlike construction constitutes a cause for disciplinary action, unless the departure was in accordance with plans and specifications prepared by or under the direct supervision of an architect.

16. Code section 7112 provides, in pertinent part, that the "[o]mission or misrepresentation of a material fact by an applicant or a licensee in obtaining, or renewing a license, or in adding a classification to an existing license constitutes a cause for disciplinary action."

17. Code section 7113 states that a "[f]ailure in a material respect on the part of a licensee to complete any construction project or operation for the price stated in the contract for such construction project or operation or in any modification of such contract constitutes a cause for disciplinary action."

18. Code section 7114 states:

(a) Aiding or abetting an unlicensed person to evade the provisions of this chapter or combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or

1 associate, or otherwise, of an unlicensed person with the intent to evade the
2 provisions of this chapter constitutes a cause for disciplinary action.

3 (b) A licensee who is found by the registrar to have violated subdivision
4 (a) shall, in accordance with the provisions of this article, be subject to the
5 registrar's authority pursuant to Section 7099 to order payment of a specified
6 sum to an injured party, including, but not limited to, payment for any injury
7 resulting from the acts of the unlicensed person.

8 19. Code section 7115 states, in pertinent part, that a "[f]ailure in any material respect to
9 comply with the provisions of this chapter, or any rule or regulations adopted pursuant to this
10 chapter, or to comply with provisions of Section 7106 of the Public Contract Code, constitutes a
11 cause for disciplinary action."

12 20. Code section 7116 states that "[t]he doing of any willful or fraudulent act by the
13 licensee as a contractor in consequence of which another is substantially injured constitutes a
14 cause for disciplinary action."

15 21. Code section 7125.4, subdivision (a) states:

16 The filing of the exemption certificate prescribed by this article that is
17 false, or the employment of a person subject to coverage under the workers'
18 compensation laws after the filing of an exemption certificate without first
19 filing a Certificate of Workers' Compensation Insurance or Certification of
20 Self-Insurance in accordance with the provisions of this article, or the
21 employment of a person subject to coverage under the workers' compensation
22 laws without maintaining coverage for that person, constitutes a cause for
23 disciplinary action.

24 22. Code section 7154 states, that "[a] home improvement contractor who employs a
25 person to sell home improvement contracts while such person is not registered by the registrar as
26 a home improvement salesman as provided in this article, is subject to disciplinary action by the
27 registrar."

28 23. Code section 7159 states, in pertinent part:

(a)(5) Failure by the licensee, his or her agent or salesperson, or by a
person subject to be licensed under this chapter, to provide the specified
information, notices, and disclosures in the contract, or to otherwise fail to
comply with any provision of this section, is cause for discipline.

(c) In addition to the specific requirements listed under this section,
every home improvement contract and any person subject to licensure under
this chapter or his or her agent or salesperson shall comply with all of the
following:

1 (c)(3)(A) Before any work is started, the contractor shall give the buyer a
2 copy of the contract signed and dated by both the contractor and the buyer. The
3 buyer's receipt of the copy of the contract initiates the buyer's rights to cancel
the contract pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil
Code.

4 (c)(3)(B) The contract shall contain on the first page, in a typeface no
5 smaller than that generally used in the body of the document, both of the
following:

6 (ii) The name and address of the contractor to which the applicable
7 "Notice of Cancellation" is to be mailed, immediately preceded by a statement
8 advising the buyer that the "Notice of Cancellation" may be sent to the
contractor at the address noted on the contract.

9 (c)(4) A statement that, upon satisfactory payment being made for any
10 portion of the work performed, the contractor shall, prior to any further
11 payment being made, furnish to the person contracting for the home
improvement or swimming pool work a full and unconditional release from any
claim or mechanic's lien pursuant to Section 3114 of the Civil Code for that
portion of the work for which payment has been made.

12 (c)(6) The contract shall contain, in close proximity to the signatures of
13 the owner and contractor, a notice stating that the owner or tenant has the right
to require the contractor to have a performance and payment bond.

14 (d) A home improvement contract and any changes to the contract, shall
15 be in writing and signed by the parties to the contract prior to the
16 commencement of any work covered by the contract or applicable change
order, and shall include or comply with all of the following:

17 (d)(3) The following heading on the contract form that identifies the type
of contract in at least 10-point boldface type: "Home Improvement."

18 (d)(4) The following statement in at least 12-point boldface type: "You
19 are entitled to a completely filled in copy of this agreement, signed by both you
and the contractor, before any work may be started."

20 (d)(5) The heading: "Contract Price," followed by the amount of the
21 contract in dollars and cents.

22 (d)(8) If a down payment will be charged, the details of the down
23 payment shall be expressed in substantially the following form, and shall
include the text of the notice as specified in subparagraph (C):

24 (A) The heading: "Down Payment."

25 (B) A space where the actual down payment appears.

26 (C) The following statement in at least 12-point boldface type: "THE
27 DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE
CONTRACT PRICE, WHICHEVER IS LESS"

28 (d)(9) If any payments, other than the down payment, is to be made
before the project is completed, the details of these payments, known as

1 progress payments, shall be expressed in substantially the following form, and
2 shall include the text of the statement as specified in subparagraph (C):

3 (A) A schedule of progress payments shall be preceded by the heading:
4 "Schedule of Progress Payments."

5 (B) Each progress payment shall be stated in dollars and cents and
6 specifically reference the amount of work or services to be performed any
7 materials and equipment to be supplied.

8 (C) The section of the contract reserved for the progress payments shall
9 include the following statement in at least 12-point boldface type:

10 The schedule of progress payments must specifically describe each phase
11 of work, including the type and amount of work or services scheduled to be
12 supplied in each phase, along with the amount of each proposed progress
13 payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO
14 COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR
15 MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR
16 MAY REQUIRE A DOWN PAYMENT.

17 (d)(10) The contract shall address the commencement of work to be
18 performed in substantially the following form:

19 (A) A statement that describes what constitutes substantial
20 commencement of work under the contract.

21 (B) The heading: "Approximate State Date."

22 (C) The approximate date on which work will be commenced.

23 (d)(11) The estimated completion date of the work shall be referenced in
24 the contract in substantially the following form:

25 (A) The heading: "Approximate Completion Date."

26 (B) The approximate date of completion.

27 (d)(12) If applicable, the heading: "List of Documents to be Incorporated
28 into the Contract," followed by the list of documents incorporated into the
contract.

(d)(13) The heading: "Note about Extra Work and Change Orders,"
followed by the following statements:

"Extra Work and Change Orders become part of the contract once the
order is prepared in writing and signed by the parties prior to the
commencement of any work covered by the new change order. The order must
describe the scope of the extra work or change, the cost to be added or
subtracted from the contract, and the effect the order will have on the schedule
of progress payments.

(e) All of the following notices shall be provided to the owner as part of the contract form as specified or, if otherwise authorized under this subdivision, may be provided as an attachment to the contract:

(e)(4) A notice with the heading "Mechanics' Lien Warning."

(e)(5) The following notice shall be provided in at least 12-point typeface: "Information about the Contractors' State License Board (CSLB):" CSLB is the state consumer protection agency that licenses and regulates construction contractors.

(e)(6)(A) The notice set forth in subparagraph (B) and entitled "Three-Day Right to Cancel," shall be provided to the buyer.

24. Code section 7159.5 states, in pertinent part:

This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson to comply with the following provisions is cause for discipline.

(a)(3) If a down payment will be charged, the down payment may not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

(6) Upon any payment by the person contracting for home improvement, and prior to any further payment being made, the contractor shall, if requested, obtain and furnish to the person a full and unconditional release from any potential lien claimant claim or mechanic's lien pursuant to Section 3114 of the Civil Code for any portion of the work for which payment has been made. The person contracting for home improvement may withhold all further payments until these releases are furnished.

COST RECOVERY/RESTITUTION

25. Code section 125.3 states, in pertinent part, that the Registrar may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

26. Section 11519, subdivision (d), of the Government Code states, in pertinent part, that the Registrar may require restitution of damages suffered as a condition of probation in the event probation is ordered.

1 **I. WALTER M. PROJECT**

2 27. On or about August 7, 2008, Respondent, by and through Laurent Assaker, an
3 unregistered salesperson, entered into a written home improvement contract with Walter M. to
4 remodel his kitchen at his residence located at 3412 Montair Avenue, Long Beach, California
5 ("Walter's project"). The contract was in the amount of \$14,000. On that same day, Respondent
6 requested and received a down payment in the amount of \$5,000. There was a change order to
7 upgrade the marble countertops and drawer accessories in the amount of \$657.00, bringing the
8 contract price to \$14,657. Work commenced on or about August 11, 2008, and was last
9 performed on or about September 19, 2008, due to the fact Respondent failed to have a valid
10 contractor's license. Walter paid Respondent \$10,000.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Contracting Without a License)**

13 28. Respondent has subjected its contractor's license to disciplinary action under Code
14 section 7115, in that on or about August 8, 2008, Respondent failed to comply with the
15 requirements of section 7028, in that Respondent entered into the home improvement contract
16 with Walter at a time when it was not licensed by the Board.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Departure From Accepted Trade Standards)**

19 29. Respondent has subjected its contractor's license to disciplinary action under Code
20 section 7109, subdivision (a), in that on Walter's project, Respondent willfully departed from
21 accepted trade standards for good and workmanlike construction in a material respect, as follows:

- 22 a. Respondent failed to install the base molding and crown molding flush on the
23 cabinets.
- 24 b. Respondent failed to install the cabinet doors straight and flush.
- 25 c. Respondent left sections of gaps between the floor and the kick plates, and/or failed
26 to install any kick plates.
- 27 d. Respondent failed to use wood with same grain and color.
- 28 e. Respondent failed to install the kitchen sink centered at the window.

1 f. Respondent failed to correctly install the Lazy-Susan cabinet in that it does not fully
2 open, hitting the dishwasher.

3 g. Respondent failed to install spacers to cover the gaps between the floor and cabinets.

4 h. Respondent failed to cover the shimmed areas between the floor and cabinets.

5 i. Respondent failed to finish installing the tile work above the countertop.

6 j. Respondent cut the wood floor too short in front of the door, and instead installed a
7 piece of wood to cover the gap between the floor and the threshold.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Failure to Complete the Project for Price Stated in Contract)**

10 30. Respondent has subjected its contractor's license to disciplinary action under Code
11 section 7113, in that Respondent failed in a material respect to complete Walter's project for the
12 contract price and the homeowner will be required to spend a substantial sum in excess of the
13 contract price to complete the project in accordance with the contract.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Failure to Obtain Building Permits)**

16 31. Respondent has subjected its contractor's license to disciplinary action under Code
17 section 7110, in that on Walter's project, Respondent willfully or deliberately disregarded and
18 violated section 18.12 (Permits) of the California Building Code adopted by the City of Long
19 Beach, Ordinance 08-0039, in that Respondent failed to obtain any building permits prior to the
20 commencement of construction.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Unregistered Home Improvement Salesperson)**

23 32. Respondent has subjected its contractor's license to disciplinary action under Code
24 section 7154, in that he employed Laurent Assaker to sell a home improvement contract to Walter
25 when she was not registered with the Board as a home improvement salesperson.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Home Improvement Contract Form)

33. Respondent has subjected its contractor's license to disciplinary action under Code section 7159, in that on Walter's project, Respondent failed to comply with the provisions of that Code, as follows:

a. Subdivision (a)(5): Respondent failed to provide the specified information, notices, and disclosures in the contract, or otherwise failed to comply with any provision of this section.

b. Subdivision (c)(3)(A): Respondent failed to provide the buyer with a copy of the contract signed and dated by both the contractor and the buyer. The buyer's receipt of the copy of the contract initiates the buyer's rights to cancel the contract pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

c. Subdivision (c)(3)(B): Respondent failed to provide in the contract the name and address of the contractor to which the applicable "Notice of Cancellation" is to be mailed, immediately preceded by a statement advising the buyer that the "Notice of Cancellation" may be sent to the contractor at the address noted on the contract.

d. Subdivision (c)(4): Respondent failed to provide in the contract a statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code for that portion of the work for which payment has been made.

e. Subdivision (c)(5): Respondent failed to provide a written change order for changes or extra work on the contract prior to the commencement of any work covered by a change order.

f. Subdivision (c)(6): Respondent failed to include in the contract, in close proximity to the signatures of the owner and contractor, a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

g. Subdivision (d)(3): Respondent failed to include in the contract the following heading that identifies the type of contract in at least 10-point boldface type: "Home Improvement."

1 h. Subdivision (d)(4): Respondent failed to include in the contract in at least a 12-point
2 boldface type: "You are entitled to a completely filled in copy of this agreement, signed by both
3 you and the contractor, before any work may be started."

4 i. Subdivision (d)(5): Respondent failed to include in the contract the heading:
5 "Contract Price," followed by the amount of the contract in dollars and cents.

6 j. Subdivision (d)(8) Respondent failed to include in the contract a statement in at least
7 12-point boldface type that the down payment may not exceed \$1,000 or 10 percent of the
8 contract price, whichever is less.

9 k. Subdivision (d)(9)(A): Respondent failed to state a schedule of progress payments
10 preceded by the heading: "Schedule of Progress Payments."

11 l. Subdivision (d)(9)(B): Respondent failed to state each progress payment in dollars
12 and cents and specifically reference the amount of work or services to be performed and any
13 materials and equipment to be supplied.

14 m. Subdivision (d)(9)(C): Respondent failed to include in the contract a statement in at
15 least 12-point boldface type that the schedule of progress payments must specifically describe
16 each phase of work, including the type and amount of work or services scheduled to be supplied
17 in each phase, along with the amount of each proposed progress payment.

18 n. Subdivision (d)(10): Respondent failed to include in the contract what constitutes
19 substantial commencement of work under the contract.

20 o. Subdivision (d)(11): Respondent failed to include in the contract the estimated
21 completion date of work under the contract.

22 p. Subdivision (d)(12): Respondent failed to provide a list of all the documents to be
23 incorporated into the contract.

24 q. Subdivision (d)(13): Respondent failed to include in the contract a statement that
25 "Extra Work and Change Orders" will become a part of the contract once the order is prepared in
26 writing and signed by the parties prior to the commencement of any work covered by the new
27 change order. The order must describe the scope of the extra work or change, the cost to be
28

1 added or subtracted from the contract, and the effect the order will have on the schedule of
2 progress payments.

3 r. Subdivision (e)(4): Respondent failed to provide a notice of the mechanic's lien
4 warning.

5 s. Subdivision (e)(5): Respondent failed to provide a notice of complaint referral to the
6 CSLB, including an address.

7 t. Subdivision (e)(6)(A): Respondent failed to provide a notice of 3-day right to cancel.

8 **EIGHTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with the Home Improvement Contract Requirements)**

10 34. Respondent has subjected its contractor's license to disciplinary action under Code
11 section 7159.5, in that on Walter's project, Respondent failed to comply with the provisions of
12 that Code, as follows:

13 a. Subdivision (a)(3): Respondent requested and received a down payment of \$5,000,
14 an amount which exceeds the maximum down payment of \$1,000 or 10% of the contract amount,
15 whichever is less.

16 b. Subdivision (a)(6): Respondent failed to provide a full and unconditional release
17 from any potential lien claimant claim or mechanic's lien pursuant to Civil Code section 3114 for
18 any portion of work for which payment had been made.

19 **II. ED & ANU N. PROJECT**

20 35. On or about October 29, 2008, Respondent entered into a written home improvement
21 contract with Ed and Anu N. to install kitchen cabinets, a granite countertop, and six recessed
22 lights at their residence located at 4251 Emerald Circle, Cypress, California ("Ed's project"). The
23 contract was in the amount of \$14,000. On that same day, Respondent requested and received a
24 down payment in the amount of \$5,000. There was a change order to change the color of the
25 granite countertop with no change in the contract price. Work commenced on or about November
26 12, 2008. Due to a contract price dispute, work was last performed on that same date. Anu N.
27 paid Respondent \$5,000. On March 16, 2009, Respondent Romel Nassif Kfoury, while serving
28 as owner of Respondent Apex Estate Cons, certified in writing and under penalty of perjury that

1 he gave Respondent Nu Kitchen and Floors, Inc., dba Nu Construction, permission to enter into
2 the contract with Ed and Anu N. on behalf of Apex Estate Cons, of which Respondent Romel
3 Nassif Kfoury was and remains sole owner.

4 **NINTH CAUSE FOR DISCIPLINE**

5 **(Abandonment)**

6 36. Respondent has subjected its contractor's license to disciplinary action under Code
7 section 7107, in that on or about November 12, 2008, Respondent abandoned Ed's project, having
8 only completed demolition work.

9 **TENTH CAUSE FOR DISCIPLINE**

10 **(Willful or Fraudulent Act)**

11 37. Respondent has subjected its contractor's license to disciplinary action under Code
12 section 7116, in that on Ed's project, Respondent committed a willful or fraudulent act causing a
13 substantial injury to Ed and Anu when Respondent willfully failed to complete the project,
14 provide any materials, or refund any portion of the \$5,000 to him.

15 **ELEVENTH CAUSE FOR DISCIPLINE**

16 **(Failure to Obtain Building Permits)**

17 38. Respondent has subjected its contractor's license to disciplinary action under Code
18 section 7110, in that on Ed's project, Respondent willfully or deliberately disregarded and
19 violated section 5-1 and 5-2 (Permits) of the California Building Code adopted by the City of
20 Cypress, Ordinance 1093, in that Respondent failed to obtain any building permits prior to the
21 commencement of construction.

22 **TWELFTH CAUSE FOR DISCIPLINE**

23 **(Violations of the Home Improvement Contract Form)**

24 39. Respondent has subjected its contractor's license to disciplinary action under Code
25 section 7159, in that on Ed's project, Respondent failed to comply with the provisions of that
26 Code, as follows:

27 a. Subdivision (a)(5): Respondent failed to provide the specified information, notices,
28 and disclosures in the contract, or otherwise failed to comply with any provision of this section.

1 b. Subdivision (c)(3)(A): Respondent failed to provide the buyer with a copy of the
2 contract signed and dated by both the contractor and the buyer. The buyer's receipt of the copy of
3 the contract initiates the buyer's rights to cancel the contract pursuant to Sections 1689.5 to
4 1689.14, inclusive, of the Civil Code.

5 c. Subdivision (c)(3)(B): Respondent failed to provide in the contract the name and
6 address of the contractor to which the applicable "Notice of Cancellation" is to be mailed,
7 immediately preceded by a statement advising the buyer that the "Notice of Cancellation" may be
8 sent to the contractor at the address noted on the contract.

9 d. Subdivision (c)(4): Respondent failed to provide in the contract a statement that,
10 upon satisfactory payment being made for any portion of the work performed, the contractor
11 shall, prior to any further payment being made, furnish to the person contracting for the home
12 improvement a full and unconditional release from any claim or mechanic's lien pursuant to
13 Section 3114 of the Civil Code for that portion of the work for which payment has been made.

14 e. Subdivision (c)(5): Respondent failed to provide a written change order for changes
15 or extra work on the contract prior to the commencement of any work covered by a change order.

16 f. Subdivision (c)(6): Respondent failed to include in the contract, in close proximity to
17 the signatures of the owner and contractor, a notice stating that the owner or tenant has the right
18 to require the contractor to have a performance and payment bond.

19 g. Subdivision (d)(3): Respondent failed to include in the contract the following
20 heading that identifies the type of contract in at least 10-point boldface type: "Home
21 Improvement."

22 h. Subdivision (d)(4): Respondent failed to include in the contract in at least a 12-point
23 boldface type: "You are entitled to a completely filled in copy of this agreement, signed by both
24 you and the contractor, before any work may be started."

25 i. Subdivision (d)(5): Respondent failed to include in the contract the heading:
26 "Contract Price," followed by the amount of the contract in dollars and cents.

1 j. Subdivision (d)(8) Respondent failed to include in the contract a statement in at least
2 12-point boldface type that the down payment may not exceed \$1,000 or 10 percent of the
3 contract price, whichever is less.

4 k. Subdivision (d)(9)(A): Respondent failed to state a schedule of progress payments
5 preceded by the heading: "Schedule of Progress Payments."

6 l. Subdivision (d)(9)(B): Respondent failed to state each progress payment in dollars
7 and cents and specifically reference the amount of work or services to be performed and any
8 materials and equipment to be supplied.

9 m. Subdivision (d)(9)(C): Respondent failed to include in the contract a statement in at
10 least 12-point boldface type that the schedule of progress payments must specifically describe
11 each phase of work, including the type and amount of work or services scheduled to be supplied
12 in each phase, along with the amount of each proposed progress payment.

13 n. Subdivision (d)(10): Respondent failed to include in the contract what constitutes
14 substantial commencement of work under the contract.

15 o. Subdivision (d)(11): Respondent failed to include in the contract the estimated
16 completion date of work under the contract.

17 p. Subdivision (d)(12): Respondent failed to provide a list of all the documents to be
18 incorporated into the contract.

19 q. Subdivision (d)(13): Respondent failed to include in the contract a statement that
20 "Extra Work and Change Orders" will become a part of the contract once the order is prepared in
21 writing and signed by the parties prior to the commencement of any work covered by the new
22 change order. The order must describe the scope of the extra work or change, the cost to be
23 added or subtracted from the contract, and the effect the order will have on the schedule of
24 progress payments.

25 r. Subdivision (e)(4): Respondent failed to provide a notice of the mechanic's lien
26 warning.

27 s. Subdivision (e)(5): Respondent failed to provide a notice of complaint referral to the
28 CSLB, including an address.

1 t. Subdivision (e)(6)(A): Respondent failed to provide a notice of 3-day right to cancel.

2 **THIRTEENTH CAUSE FOR DISCIPLINE**

3 **(Failure to Comply with the Home Improvement Contract Requirements)**

4 40. Respondent has subjected its contractor's license to disciplinary action under Code
5 section 7159.5, in that on Ed's project, Respondent failed to comply with the provisions of that
6 Code, as follows:

7 a. Subdivision (a)(3): Respondent requested and received a down payment of \$5,000,
8 an amount which exceeds the maximum down payment of \$1,000 or 10% of the contract amount,
9 whichever is less.

10 b. Subdivision (a)(6): Respondent failed to provide a full and unconditional release
11 from any potential lien claimant claim or mechanic's lien pursuant to Civil Code section 3114 for
12 any portion of work for which payment had been made.

13 **FOURTEENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Provide Workers' Compensation Insurance)**

15 41. Respondent has subjected its contractor's license to disciplinary action under Code
16 section 7125.4, in that Respondent filed an exemption certificate with the Board certifying he had
17 no employees subject to the worker's compensation laws. However, on Walter and Ed's projects,
18 Respondent had employees working on the job who were subject to coverage under the workers'
19 compensation laws.

20 **OTHER MATTERS**

21 42. Pursuant to Code sections 7097 and 7098, if Contractor's License Number 924081
22 issued to Nu Kitchen and Floors, Inc., doing business as Nu Construction, is suspended or
23 revoked by decision of the Registrar, then the Registrar may suspend or revoke, without notice,
24 any other license issued in the name of Elias Chafic Mazloun or for which Elias Chafic Mazloun
25 has furnished the qualifying experience and appearance.

26 43. Pursuant to Code section 7121.5, if discipline is imposed on Contractor's License
27 Number 924081 issued to Nu Kitchen and Floors, Inc., doing business as Nu Construction, then
28 Elias Chafic Mazloun shall be prohibited from serving as an officer, director, associate, partner,

1 or qualifying individual of any licensee during the time the discipline is imposed, whether or not
2 he had knowledge or participated in the acts or omissions constituting grounds for discipline, and
3 any licensee which employs, elects, or associates Elias Chafic Mazloun shall be subject to
4 disciplinary action.

5 44. By giving Respondent Nu Kitchen and Floors, Inc., dba Nu Construction, permission
6 to enter into the contract with Ed and Ana N. on behalf of Apex Estate Cons, Romel Nassif
7 Kfoury, while serving as owner of Respondent Apex Estate Cons, had knowledge of or
8 participated in the acts or omissions which constitute cause for discipline against Respondent Nu
9 Kitchen and Floors, Inc., dba Nu Construction.

10 45. Pursuant to Code section 7122, the causes for discipline established as to Respondent
11 Nu Kitchen and Floors, Inc., dba Nu Construction likewise constitute cause for discipline against
12 Contractor's License Number 895619, issued to Romel Nassif Kfoury as owner of Apex Estate
13 Cons.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Registrar of Contractors issue a decision:

17 1. Revoking or suspending Contractor's License Number 924081 issued to Nu Kitchen
18 and Floors, Inc., doing business as Nu Construction;

19 2. Revoking or suspending Contractor's License Number 895619 issued to Romel Nassif
20 Kfoury, as owner of Apex Estate Cons.;

21 3. Revoking or suspending any other license for which Elias Chafic Mazloun is
22 furnishing the qualifying experience or appearance;

23 4. Revoking or suspending any other license for which Romel Nassif Kfoury is
24 furnishing the qualifying experience or appearance;

25 5. Prohibiting Elias Chafic Mazloun from serving as an officer, director, associate,
26 partner, or qualifying individual of any licensee during the period that discipline is imposed on
27 Contractor's License Number 924081 issued to Nu Kitchen and Floors, Inc., doing business as Nu
28 Construction;

1 6. Prohibiting Romel Nassif Kfoury from serving as an officer, director, associate,
2 partner, or qualifying individual of any licensee during the period that discipline is imposed on
3 Contractor's License Number 895619 issued to Romel Nassif Kfoury as owner of Apex Estate
4 Cons;

5 7. Ordering restitution of all damages according to proof suffered by Walter M., and Ed
6 and Ana N., as a condition of probation in the event probation is ordered;

7 8. Ordering restitution of all damages suffered by Walter M., and Ed and Ana N., as a
8 result of Nu Kitchen and Floors, Inc.'s, conduct as a contractor, as a condition of restoration of
9 Contractor's License Number 924081 issued to Nu Kitchen and Floors, Inc. doing business as
10 Nu Construction;

11 9. Ordering restitution of all damages suffered by Walter M., and Ed and Ana N., as a
12 result of Nu Kitchen and Floors, Inc.'s, conduct as a contractor, as a condition of restoration of
13 Contractor's License Number 895619 issued to Romel Nassif Kfoury, owner of Apex Estate
14 Cons;

15 10. Ordering Nu Kitchen and Floors, Inc., doing business as Nu Construction, and Romel
16 Nassif Kfoury, owner of Apex Estate Cons, to pay, jointly and severally, the Registrar of
17 Contractors his costs in the investigation and enforcement of the case according to proof at the
18 hearing, pursuant to Code section 125.3;

19 11. Ordering Nu Kitchen and Floors, Inc., doing business as Nu Construction, and Romel
20 Nassif Kfoury, owner of Apex Estate Cons, to provide the Registrar with a listing of all
21 contracting projects in progress and the anticipated completion date of each; and,

22 12. Taking such other and further action as deemed necessary and proper.
23

24 DATED: October 28, 2010

for W. Robinson
WOOD ROBINSON
Enforcement Supervisor II
Contractors' State License Board
Department of Consumer Affairs
State of California
Complainant

28 SD2009702502